

## SENATE BILL No. 161

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-13 ; IC 24-10 .

**Synopsis:** Airline consumer advocate. Establishes the office of the airline consumer advocate (office) in the attorney general's office. Requires the office beginning January 1, 2009, to: (1) investigate certain alleged or suspected violations or acts by air carriers; (2) assist consumers in resolving disputes with air carriers; (3) identify problems encountered by consumers in dealing with air carriers; (4) report annually to the legislative council on the office's activities; and (5) publicize and staff or monitor as appropriate a toll free telephone number, a mailing address, and an Internet web site to receive complaints and questions from consumers. Provides that if the office determines after an investigation that an air carrier has committed a specified violation or act, the office shall attempt to reach a settlement with the carrier. Provides that the office may obtain any of the following as part of a settlement agreement: (1) Compensation for affected consumers. (2) The reasonable costs of the office's investigation. (3) A civil penalty not exceeding \$1,000 for each violation or act. Allows the attorney general to bring an action to: (1) obtain any remedy the office would be authorized to obtain under a settlement agreement, if the office is unable to reach a settlement with an air carrier; or (2) enforce any provision of a settlement agreement between the office and a carrier. Establishes the airline consumer advocate account within the state general fund to be used for the office's operations. Provides that civil penalties recovered by the office from air carriers shall be deposited in the account. Continuously appropriates money in the account to the office. Requires an air carrier to provide the following whenever passengers have boarded an aircraft  
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**Effective:** Upon passage.

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**Waltz, Hershman**

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January 8, 2008, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.

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and are delayed for more than three hours before takeoff: (1) Electric generation service for lighting and air circulation within the aircraft. (2) Waste removal service for the aircraft's restrooms. (3) Adequate drinking water, food, and refreshments for passengers. Requires an air carrier to provide notice of consumers' rights by posting signs at certain specified areas in each airport in Indiana served by the carrier. Allows a consumer to submit a complaint to the office alleging that an air carrier has committed specified violations or acts.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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## SENATE BILL No. 161

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-6-13 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
3       PASSAGE]:  
4       **Chapter 13. Office of the Airline Consumer Advocate**  
5       **Sec. 1. The definitions in IC 24-10-1 apply throughout this**  
6       **chapter.**  
7       **Sec. 2. As used in this chapter, "account" refers to the airline**  
8       **consumer advocate account established by section 9 of this chapter.**  
9       **Sec. 3. (a) The attorney general shall establish the office of the**  
10      **airline consumer advocate to enforce IC 24-10 and to carry out this**  
11      **chapter.**  
12      **(b) The attorney general shall provide to the office the**  
13      **assistance of such staff, which may include one (1) or more**  
14      **investigators, as is necessary for the office to discharge its duties**  
15      **under:**



(1) IC 24-10; and

(2) this chapter.

**Sec. 4. (a) Beginning January 1, 2009, the office shall do the following:**

**(1) Investigate, on its own motion or upon one (1) or more complaints received under IC 24-10-2-3:**

**(A) an alleged or a suspected violation by an air carrier of IC 24-10-2-1 or IC 24-10-2-2(a); or**

**(B) an allegation that an air carrier has:**

**(i) provided service that is unsafe, unjustly discriminatory, or inadequate; or**

**(ii) refused or failed to provide a service.**

**(2) Assist consumers in resolving disputes with air carriers.**

**(3) Identify the types of problems that consumers routinely encounter in dealing with air carriers.**

**(4) Prepare and submit an annual report to the legislative council under section 10 of this chapter.**

**(5) Publicize and staff or monitor as appropriate the:**

**(A) toll free telephone number;**

**(B) mailing address; and**

**(C) Internet web site address;**

**established by the office under subsection (b).**

**(b) Not later than December 1, 2008, the office shall establish:**

**(1) a toll free telephone number;**

**(2) a mailing address; and**

**(3) an Internet web site address;**

**to receive complaints and questions from consumers under this chapter and IC 24-10-2-3.**

**Sec. 5. (a) Subject to subsection (b), the attorney general or an investigator for the office may do any of the following when conducting an investigation under section 4(a)(1) of this chapter:**

**(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.**

**(2) Issue and serve a subpoena for the appearance of a person to provide testimony under oath.**

**(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).**

**(b) This section does not empower the attorney general or an investigator to require an air carrier to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The office shall**

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1 exercise all necessary caution to avoid disclosure of confidential  
2 information supplied under this section.

3 **Sec. 6.** After an investigation under section 4(a)(1) of this  
4 chapter, the office shall do one (1) of the following:

5 (1) If the office determines that a violation described in  
6 section 4(a)(1)(A) of this chapter or an act described in section  
7 4(a)(1)(B) of this chapter has not occurred, the office shall:

8 (A) conclude the investigation without taking any action  
9 against the air carrier under this chapter; and

10 (B) dismiss the complaint, in the case of an investigation  
11 initiated upon receipt of a complaint under IC 24-10-2-3.

12 The office shall provide written notice of a determination  
13 under this subdivision to the air carrier that is the subject of  
14 the investigation and to the complainant, if applicable. A  
15 notice under this subdivision must include the reasons for the  
16 office's determination and, in the case of a notice to a  
17 complainant, a statement that the office's determination does  
18 not preclude the complainant from pursuing any claim  
19 available to the claimant under state or federal law.

20 (2) If the office determines that a violation described in  
21 section 4(a)(1)(A) of this chapter or an act described in section  
22 4(a)(1)(B) of this chapter has occurred, the office shall  
23 attempt to resolve the matter by reaching a settlement with  
24 the responsible air carrier. As part of a settlement under this  
25 subdivision, the office may obtain one (1) or a combination of  
26 any of the following from the air carrier:

27 (A) Compensation for consumers affected by the violation  
28 or act, including one (1) or more of the following:

29 (i) A refund of the ticket price paid by consumers for the  
30 flight involving the violation or act.

31 (ii) Monetary damages.

32 (iii) Free or reduced price airline tickets.

33 (iv) Frequent flyer miles or similar rewards.

34 Monetary compensation that a carrier agrees to pay under  
35 this clause shall be paid into an escrow account for  
36 distribution to consumers affected by the violation or act.

37 (B) The reasonable costs of the office's investigation.

38 (C) A civil penalty under section 7 of this chapter.

39 **Sec. 7.** (a) If the office determines after an investigation that a  
40 violation described in section 4(a)(1)(A) of this chapter or an act  
41 described in section 4(a)(1)(B) of this chapter has occurred, the  
42 office may recover from the air carrier a civil penalty not to exceed

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one thousand dollars (\$1,000) for each violation or act. For purposes of this section, a single act, omission, occurrence, or event that results in multiple complaints being filed under IC 24-10-2-3 constitutes a single offense and is not subject to more than one (1) civil penalty under this section. The office may not consider each day that a particular act, omission, occurrence, or event continues to be a separate offense. However, if the office determines that a violation of IC 24-10-2-1 has occurred, the office may recover from the air carrier a civil penalty not to exceed one thousand dollars (\$1,000) for each passenger affected by the violation.

(b) In determining whether to impose a civil penalty under this section and the amount of any penalty to be imposed, the office may consider the following factors:

- (1) Any compensation provided to consumers by the air carrier under section 6(2)(A) of this chapter as part of a settlement agreement.
- (2) The duration and gravity of the violation or act, including the number of consumers affected.
- (3) The amount of a civil penalty that will deter future offenses by the air carrier.
- (4) The air carrier's market share in Indiana.
- (5) The good faith of the air carrier in attempting to:
  - (A) reach a settlement agreement with the office under section 6(2) of this chapter; or
  - (B) otherwise remedy the violation or act.
- (6) Whether the violation or act is the result of any of the following:
  - (A) An act of God.
  - (B) A negligent or an intentional act of a consumer.
  - (C) An emergency situation.
  - (D) Unavoidable casualty.

(c) A civil penalty recovered under this section shall be deposited in the account for use in the administration and enforcement of:

- (1) IC 24-10; and
- (2) this chapter.

Sec. 8. (a) The attorney general may bring an action under this section in the name of the state to:

- (1) obtain any remedy described in subsection (b) if:
  - (A) the office has determined after an investigation that a violation described in section 4(a)(1)(A) of this chapter or an act described in section 4(a)(1)(B) of this chapter has

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- 1 occurred; and  
 2 (B) the office is unable to reach a settlement agreement  
 3 with the responsible air carrier under section 6(2) of this  
 4 chapter; or  
 5 (2) enforce any provision of a settlement agreement between  
 6 the office and an air carrier under section 6(2) of this chapter,  
 7 including the collection of an unpaid civil penalty imposed by  
 8 the office.  
 9 (b) The attorney general may bring an action under subsection  
 10 (a) to obtain any or all of the following:  
 11 (1) Any form of compensation for affected consumers  
 12 described in section 6(2)(A) of this chapter.  
 13 (2) A civil penalty under section 7 of this chapter.  
 14 (3) An injunction to enjoin continuing or future:  
 15 (A) violations described in section 4(a)(1)(A) of this  
 16 chapter; or  
 17 (B) acts described in section 4(a)(1)(B) of this chapter.  
 18 (4) The office's reasonable costs in conducting the  
 19 investigation under section 4(a)(1) of this chapter.  
 20 (5) Reasonable attorney's fees.  
 21 (6) Costs of the action.  
 22 (c) An appeal from the judgment of a court under this section  
 23 may be taken by either party in the manner and to the same extent  
 24 as from orders or judgments in a civil action.  
 25 **Sec. 9. (a) The airline consumer advocate account is established**  
 26 **in the state general fund for purposes of the administration and**  
 27 **enforcement of:**  
 28 (1) this chapter; and  
 29 (2) IC 24-10.  
 30 **The account shall be administered by the attorney general.**  
 31 (b) The account consists of the following:  
 32 (1) Civil penalties recovered by the office under section 7 of  
 33 this chapter.  
 34 (2) Money appropriated to the account by the general  
 35 assembly.  
 36 (3) Money from any other source authorized for, or  
 37 appropriated to, the account.  
 38 (c) Money in the account is continuously appropriated to the  
 39 office for the administration and enforcement of:  
 40 (1) this chapter; and  
 41 (2) IC 24-10.  
 42 (d) The expenses of administering the account shall be paid from

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1 money in the account.

2 (e) The treasurer of state shall invest the money in the account  
3 not currently needed to meet the obligations of the account in the  
4 same manner as other public money may be invested.

5 (f) Money in the account at the end of a state fiscal year does not  
6 revert to the state general fund.

7 Sec. 10. (a) Beginning in 2009, the office shall, after June 30 and  
8 before November 1 of each year, report to the legislative council on  
9 the following:

10 (1) The office's budget for the most recent state fiscal year.

11 (2) The office's actual income and expenses during the most  
12 recent state fiscal year.

13 (3) The projected budget required by the office to carry out its  
14 duties under:

15 (A) this chapter; and

16 (B) IC 24-10;

17 during the current state fiscal year.

18 (4) The office's staffing during the most recent fiscal year,  
19 including information on:

20 (A) the number of employees employed by the office and a  
21 description of their responsibilities; and

22 (B) any vacant positions.

23 (5) The office's projected staffing needs during the current  
24 state fiscal year.

25 (6) The number and types of complaints received by the office  
26 under IC 24-10-2-3 during the most recent state fiscal year,  
27 including a description of:

28 (A) the number of complaints resolved; and

29 (B) the number of complaints outstanding.

30 (7) The number and types of investigations conducted by the  
31 office under section 4(a)(1) of this chapter during the most  
32 recent state fiscal year, including a summary of the following:

33 (A) The number and types of investigations that remain  
34 open as of the date of the report.

35 (B) The number and types of investigations that were  
36 concluded during the most recent state fiscal year. For  
37 each investigation reported under this clause, the office  
38 shall provide information concerning:

39 (i) the amount and type of any compensation described  
40 in section 6(2)(A) of this chapter that was obtained for  
41 affected consumers through a settlement agreement  
42 under section 6(2) of this chapter or otherwise;

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(ii) the amount of any civil penalties recovered under section 7 of this chapter as a result of the investigation; and  
 (iii) any other relief obtained by the office under section 6(2) or 8 of this chapter in connection with the investigation.

(8) The number and types of disputes that the office assisted consumers in resolving under section 4(a)(2) of this chapter.

(9) Any problems identified by the office under section 4(a)(3) of this chapter during the most recent state fiscal year.

(10) Any recommendations for legislation needed to address air carriers or the rights of airline consumers.

(11) Any other topics or issues:

(A) on which a report is requested by the legislative council; or

(B) considered relevant by the office in reporting on its activities during the most recent state fiscal year.

(b) A report to the legislative council under this section must be in an electronic format under IC 5-14-6.

Sec. 11. The attorney general may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 12. (a) This chapter may not be construed to:

(1) require any air carrier or airport to take any action in contravention of:

(A) a federal law or regulation; or

(B) an order or directive of:

(i) the Federal Aviation Administration;

(ii) the United States Secretary of Transportation; or

(iii) any other federal agency having jurisdiction over the air carrier or airport; or

(2) confer on the office any power or authority in contravention of federal law or regulation.

(b) The provisions of this chapter are severable as provided in IC 1-1-1-8(b).

SECTION 2. IC 24-10 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

## **ARTICLE 10. AIRLINE PASSENGERS**

### **Chapter 1. Definitions**

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Air carrier" means a person that:

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(1) provides air transportation between:

(A) a place in Indiana; and

(B) another place inside or outside Indiana; and

(2) has been issued a certificate of public convenience and necessity by the United States Secretary of Transportation under 49 U.S.C. 41102(a).

Sec. 3. "Aircraft" has the meaning set forth in 49 U.S.C. 40102(a)(6).

Sec. 4. "Airport" refers to an air carrier airport (as defined in 49 U.S.C. 47102(1)) that is located in Indiana.

Sec. 5. "Air transportation" means the transportation of passengers by aircraft as a common carrier for compensation.

Sec. 6. "Consumer" means an Indiana resident who:

(1) is a passenger; or

(2) has purchased a ticket, or attempted to purchase a ticket, from an air carrier for air transportation to or from an airport in Indiana.

Sec. 7. "Office" refers to the office of the airline consumer advocate established under IC 4-6-13.

Sec. 8. "Passenger" has the meaning set forth in IC 8-21-3-1(11).

## Chapter 2. Consumer Bill of Rights for Airline Passengers

Sec. 1. Whenever one (1) or more passengers have boarded an aircraft at an airport and are delayed more than three (3) hours on the aircraft before takeoff, the air carrier shall ensure that the following are provided:

(1) Electric generation service to provide temporary power for:

(A) lighting; and

(B) the circulation of fresh air;

within the aircraft.

(2) Waste removal service for the holding tanks used in connection with the aircraft's restrooms.

(3) Adequate drinking water, food, and other refreshments for passengers.

Sec. 2. (a) An air carrier shall provide clear and conspicuous notice of the rights of consumers under this chapter by causing a sign to be posted at each:

(1) service desk;

(2) ticket counter;

(3) boarding gate; and

(4) baggage claim area;

operated by, or assigned to, the air carrier in each airport in

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Indiana at which the air carrier provides air transportation.

(b) The office shall prescribe the size, font, format, and content for a sign required under subsection (a). A sign required under subsection (a) must include, at a minimum, the following information:

(1) A statement of a passenger's rights under section 1 of this chapter.

(2) A statement of a consumer's right to submit a complaint with the office under section 3 of this chapter.

(3) The:

(A) toll free telephone number;

(B) mailing address; and

(C) Internet web site address;

established by the office under IC 4-6-13-4(b) to receive complaints and questions from consumers.

(4) Any other information prescribed by the office.

Sec. 3. (a) A consumer may submit a complaint to the office alleging that an air carrier has done one (1) or more of the following:

(1) Violated section 1 or 2(a) of this chapter.

(2) Provided service that is unsafe, unjustly discriminatory, or inadequate.

(3) Refused or failed to provide a service.

(b) A consumer may submit a complaint under this section to the office by means of the:

(1) toll free telephone number;

(2) mailing address; or

(3) Internet web site address;

established by the office under IC 4-6-13-4(b) to receive complaints and questions from consumers.

Sec. 4. The attorney general may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 5. (a) This chapter may not be construed to:

(1) require any air carrier or airport to take any action in contravention of:

(A) a federal law or regulation; or

(B) an order or directive of:

(i) the Federal Aviation Administration;

(ii) the United States Secretary of Transportation; or

(iii) any other federal agency having jurisdiction over the air carrier or airport; or

(2) confer on the office any power or authority in

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1           **contravention of federal law or regulation.**  
2           **(b) The provisions of this chapter are severable as provided in**  
3           **IC 1-1-1-8(b).**  
4           **SECTION 3. An emergency is declared for this act.**

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